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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,471	12/19/2001	Raymond Moore	020375-004500US	1898
20350	7590	03/08/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			ABEL JALIL, NEVEEN	
		ART UNIT		PAPER NUMBER
				2165

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

114

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/028,471	MOORE, RAYMOND	
	<b>Examiner</b>	<b>Art Unit</b>	
	Neveen Abel-Jalil	2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 16 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,3-6,10-16,18,19,22,23,26,27 and 29-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-6,10-16,18,19,22,23,26,27 and 29-39 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**SAM RIMELL**  
**PRIMARY EXAMINER**

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

**Remarks**

1. The amendment filed on September 16, 2004 has been received and entered. Claims 2, 7-9, 17, 20-21, 24-25, and 28 have been cancelled. Claims 31-39 have been newly added. Therefore, claims 1, 3-6, 10-16, 18-19, 22-23, 26-27, and 29-39 are now pending.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 30 is rejected under 35 U.S.C. 102(e) as being anticipated by Gailey et al. (U.S. Pub. No. 2002/0161647 A1).

As to claim 30, Gailey et al. discloses wherein the memory further comprises a second computer-readable storage medium having a second computer-readable program embodied therein for operating the computer system to populate the at least one database (See pages 6-7, paragraph 0065), the second computer-readable program including:

instructions for accessing a representative-locator service maintained by the one or more competitors at an internet web site (See pages 11-12, paragraph 0108);  
instructions for extracting location information for the plurality of competitor representatives from the representative-locator service (See page 12, paragraph 0109); and  
instructions for storing the location information in the at least one database (See page 12, column 2, lines 39-52).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-6, 10-11, 16, 18, 19, 22, 26, 27, 29, and 31-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gailey et al. (U.S. Pub. No. 2002/0161647 A1) in view of Herz et al. (U.S. Patent No. 6,571,279 B1).

As to claim 1, Gailey et al. discloses a method for characterizing market distribution for a business having a plurality of business representatives, the method comprising:  
determining a location for each of the plurality of business representatives (See Gailey et al. page 4, paragraphs 0043-0044);

determining a location for each of a plurality of competitor representatives comprised by one or more competitors to the business (See Gailey et al. pages 11-12, paragraph 0108); populating at least one database with the locations for the business representatives and the locations for the competitor representatives (See Gailey et al. page 12, paragraphs 0110-0113).

Gailey et al. does not teach from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives;

correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database.

Herz et al. teaches from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives (See Herz et al. column 25, lines 26-67, and see Herz et al. column 14, lines 1-12);

correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database (See Herz et al. column 26, lines 5-28, also see Herz et al. column 23, lines 46-58, and see Herz et al. column 18, lines 7-34, and see Herz et al. column 18, lines 56-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Gailey et al. to include from location information in the at

least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives; correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Gailey et al. by the teaching of Herz et al. to include from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives; correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database because it reduces business costs by enhanced information delivery (See Herz et al. column 3, lines 28-36).

As to claim 3, Gailey et al. as modified discloses wherein determining the location for each of the plurality of competitor representatives comprises accessing an representative-locator service on an internet web site for the one or more competitors (See Gailey et al. page 12, paragraphs 109-0113).

As to claim 4, Gailey et al. as modified discloses wherein accessing the representative-locator service is performed automatically by a web robot (See Gailey et al. page 6, paragraph

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0055, also see Gailey et al. page 5, paragraph 0049, wherein “robot” reads on “mining”).

As to claim 5, Gailey et al. as modified discloses wherein determining the location for each of the plurality of competitor representatives comprises accessing an authenticated source identifying transactions preformed by the competitor representatives (See Gailey et al. page 5, paragraphs 0046-0051).

As to claim 6, Gailey et al. as modified discloses wherein the authenticated source comprises a publicly available government record (See Gailey et al. page 12, column 2, lines 46-52, wherein “publicly available government record” reads on “transaction...merchant id”).

As to claim 10, Gailey et al. as modified discloses wherein the demographic data comprise census data (See Gailey et al. page 11, paragraphs 0105-0107).

As to claim 11, Gailey et al. as modified discloses further comprising applying a filter criterion to the correlated data to characterize geographic divisions within the demographic data by market penetration (See Gailey et al. page 11, paragraphs 0101-0102, also see Gailey et al. page 6, paragraph 0056).

As to claim 16, Gailey et al. discloses a computer-readable storage medium having a computer-readable program embodied therein for directing operation of a computer system including a communications system, a processor, and a storage device, wherein the computer-

readable program includes instructions for operating the computer system (See Gailey et al. page 4, paragraph 0037, also see Gailey et al. page 5, paragraphs 0046-0047) to characterize market distribution for a business having a plurality of business representatives in accordance with the following:

maintaining at least one database on the storage device to store a location for each of the plurality of business representatives and to store a location for each of a plurality of competitor representatives comprised by one or more competitors to the business (See Gailey et al. page 9, paragraphs 0087-0089).

Gailey et al. does not teach from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives;

correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database.

Herz et al. teaches from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives (See Herz et al. column 25, lines 26-67, and see Herz et al. column 14, lines 1-12);

correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database (See Herz et al. column 26, lines

5-28, also see Herz et al. column 23, lines 46-58, and see Herz et al. column 18, lines 7-34, and see Herz et al. column 18, lines 56-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Gailey et al. to include from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives; correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Gailey et al. by the teaching of Herz et al. to include from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives; correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database because it reduces business costs by enhanced information delivery (See Herz et al. column 3, lines 28-36).

As to claim 18, Gailey et al. as modified discloses wherein the computer-readable program further includes instructions for determining the location for each of the plurality of competitor representatives by accessing an representative-locator service with the communications system on an internet web sited for the one or more competitors (See Gailey et

al. page 10, paragraphs 0090-0095).

As to claim 19, Gailey et al. as modified discloses wherein the computer-readable program further includes instructions for determining the location for each of the plurality of competitor representatives by accessing a publicly available source identifying transactions performed by the competitor representatives (See Gailey et al. page 11, paragraphs 0102-0103).

As to claim 22, Gailey et al. as modified discloses wherein the computer-readable program further includes instructions for operating the processor to apply a filter criterion to the correlated data to characterize geographic divisions within the demographic data by market penetration (See Gailey et al. page 11, paragraphs 0101-0102, also see Gailey et al. page 6, paragraph 0056, also see Gailey et al. page 12, paragraphs 0110-0113).

As to claim 26, Gailey et al. discloses a computer system comprising:  
a communications system (See Gailey et al. page 4, paragraph 0036);  
a storage device (See Gailey et al. page 12, paragraph 0113);  
a processor in communication with the communications system and the storage device  
(See Gailey et al. page 4, paragraph 0037, also see Gailey et al. page 5, paragraphs 0046-0047);  
and

a memory coupled with the processor, the memory comprising a computer-readable storage medium having a computer-readable program embodied therein for operating the computer system to characterize market distribution for a business having a plurality of business

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representatives (See Gailey et al. page 9, paragraphs 0085-0086), the computer-readable program including:

instructions for maintaining at least one database on the storage device to store a location for each of the plurality of business representatives and to store a location for each of a plurality of competitor representatives comprised by one or more competitors to the business (See Gailey et al. page 9, paragraphs 0087-0089).

Gailey et al. does not teach from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives;

correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database.

Herz et al. teaches from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives (See Herz et al. column 25, lines 26-67, and see Herz et al. column 14, lines 1-12);

correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database (See Herz et al. column 26, lines 5-28, also see Herz et al. column 23, lines 46-58, and see Herz et al. column 18, lines 7-34, and see Herz et al. column 18, lines 56-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Gailey et al. to include from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives; correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Gailey et al. by the teaching of Herz et al. to include from location information in the at least one populated database, calculating a probability that quantifies a level of competition to the business provided by the one or more competitors in terms of a distance measure between the business and competitor representatives; correlating the quantified level of competition with demographic data corresponding to the location information in the at least one populated database because it reduces business costs by enhanced information delivery (See Herz et al. column 3, lines 28-36).

As to claim 27, Gailey et al. as modified discloses wherein the computer-readable program further includes instructions for determining the location of each of the plurality of competitor representatives by accessing an representative-locator service with the communications system on an internet web site for the one or more competitors (See Gailey et al. page 5, paragraphs 0046-0049).

As to claim 29, Gailey et al. as modified discloses wherein the computer-readable program further includes instructions for operating the processor to apply a filter criterion to the correlated data to characterize geographic divisions within the demographic data by market penetration (See Gailey et al. page 11, paragraphs 0101-0102, also see Gailey et al. page 6, paragraph 0056).

As to claims 31, 34, and 37, Gailey et al. as modified discloses wherein calculating the probability that at least one of the competitor representatives exists within a predetermined distance of each business representative (See Herz et al. column 25, lines 26-67, and see Herz et al. column 14, lines 1-12, also see Herz et al. column 18, lines 56-67).

As to claims 32, 35, and 38, Gailey et al. as modified discloses wherein calculating the probability that quantifies the level of competition comprises calculating a probability that at least one of the business representatives exists within a predetermined distance of each competitor representative (See Herz et al. column 25, lines 26-67, and see Herz et al. column 14, lines 1-12, also see Herz et al. column 18, lines 56-67).

As to claims 33, 36, and 39, Gailey et al. as modified discloses wherein calculating the probability that quantifies the level of competition comprises calculating a probability that any of the competitor representatives exists within a predetermined distance of any of the business representatives (See Herz et al. column 25, lines 26-67, and see Herz et al. column 14, lines 1-12, also see Herz et al. column 18, lines 56-67).

6. Claims 12-15, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gailey et al. (U.S. Pub. No. 2002/0161647 A1) in view of Herz et al. (U.S. Patent No. 6,571,279 B1) as applied to claims 1, 3-6, 10-11, 16, 18, 19, 22, 26, 27, and 29-39 above, and further in view of Sussman et al. (U.S. Pub. 2003/0078788 A1).

As to claim 12, Gailey et al. as modified still does not teach further comprising displaying the locations graphically according to the geographic divisions, wherein the geographic divisions are distinctly displayed according to the filter criterion.

Sussman et al. teaches further comprising displaying the locations graphically according to the geographic divisions, wherein the geographic divisions are distinctly displayed according to the filter criterion (See page 7, paragraphs 0097-0100, also see page 6, paragraphs 0087-0090).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gailey et al. as modified to include further comprising displaying the locations graphically according to the geographic divisions, wherein the geographic divisions are distinctly displayed according to the filter criterion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gailey et al. as modified by the teaching of Sussman et al. to include further comprising displaying the locations graphically according to the geographic divisions, wherein the geographic divisions are distinctly displayed according to the filter

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criterion because it reduces business costs by aiding in the sales cycle management and automation of sales prospecting (See Sussman et al. page 2).

As to claim 13, Gailey et al. as modified still does not teach further comprising displaying the locations graphically.

Sussman et al. teaches further comprising displaying the locations graphically (See page 7, paragraphs 0097-0100, also see page 6, paragraphs 0087-0090).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gailey et al. as modified to include further comprising displaying the locations graphically.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gailey et al. as modified by the teaching of Sussman et al. to include further comprising displaying the locations graphically because it reduces business costs by aiding in the sales cycle management and automation of sales prospecting (See Sussman et al. page 2).

As to claim 14, Gailey et al. as modified teaches wherein displaying the locations graphically comprises displaying the locations on a map (See Sussman et al. page 7, paragraphs 0097-0100, also see Sussman et al. page 6, paragraphs 0087-0090).

As to claim 15, Gailey et al. as modified teaches wherein the at least one database includes product information for the business representatives and for the competitor

representatives, the method further comprising displaying the product information for at least one of the locations (See Sussman et al. page 7, paragraphs 0097-0100, also see Sussman et al. page 6, paragraphs 0087-0090).

As to claim 23, Gailey et al. as modified still does not teach wherein the computer-readable program further includes instructions for:

generating a graphical representation of the locations according to the geographic divisions, the graphical representation including a distinction among the geographic divisions according to the filter criterion; and transmitting the graphical representation over the communications system.

Sussman et al. teaches wherein the computer-readable program further includes instructions for:

generating a graphical representation of the locations according to the geographic divisions, the graphical representation including a distinction among the geographic divisions according to the filter criterion (See Sussman et al. page 7, paragraphs 0097-0100, also see Sussman et al. page 6, paragraphs 0087-0090); and

transmitting the graphical representation over the communications system (See Sussman et al. abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gailey et al. as modified to include generating a graphical representation of the locations according to the geographic divisions, the graphical representation including a distinction among the geographic divisions according to the filter

criterion; and transmitting the graphical representation over the communications system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gailey et al. as modified by the teaching of Sussman et al. to include generating a graphical representation of the locations according to the geographic divisions, the graphical representation including a distinction among the geographic divisions according to the filter criterion; and transmitting the graphical representation over the communications system because it reduces business costs by aiding in the sales cycle management and automation of sales prospecting (See Sussman et al. page 2).

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 3-6, 10-11, 16, 18, 19, 22, 26, 27, and 29-39 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's argument that “Gailey's filing date claiming the benefit of an earlier filing date of US provisional application is valid only to the extent that there is an enabling disclosure in the provisional application and therefore Gailey's invalid as prior art to the application without demonstration that those disclosures relied on find enabling support in the provisional application” is acknowledged but it is not deemed to be persuasive.

There's currently nothing in the MPEP that requires or states as much. Please refer to the entire section of establishment of priority under USC 102 (e).

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached on 571-272-4038. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neveen Abel-Jalil  
March 7, 2005



SAM RIMELL  
PRIMARY EXAMINER